



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/936,841 | 03/01/2002 | Martin Caldwell | 1890-0020 | 1503 |

22204 7590 10/08/2004
NIXON PEABODY, LLP
401 9TH STREET, NW
SUITE 900
WASHINGTON, DC 20004-2128

EXAMINER

THALER, MICHAEL H

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3731

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/936,841

Applicant(s)

CALDWELL ET AL.

Examiner

Michael Thaler

Art Unit

3731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 September 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 28 September 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: Please see the attached pages.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-4 and 7-18.

Claim(s) withdrawn from consideration: _____

8. ☒ The drawing correction filed on 28 September 2004 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


Michael Thaler
Primary Examiner
Art Unit: 3731

Continuation of 3. Applicant's reply has overcome the following rejection(s): claims 1-4, 7-10, 13 and 16 under 35 USC 112, 1st paragraph, as failing to comply with the written description requirement and claim 3 under 35USC 112, 2nd paragraph.

Art Unit: 3731

As to the rejection under 35 U.S.C. 112, first paragraph, the portion of sleeve 4 which is external to the patient's abdominal wall 3 is pulled radially outwardly since it is wrapped around ring 6 and thus pulled by it as seen in figure 2. Thus, it is not seen how a self-sealing valve such as the self-sealing valve shown at 18 in figures 1, 3 and 4 could function in the area external to the patient's abdominal wall 3 since it would be pulled radially outwardly by its connection to rings 6 and 5 and thus always be open. The bottom of the self-sealing valve 18 which is within body cavity 2 (internal of the patient's abdominal wall 3) is not pulled radially outwardly by any structure and thus it is clear how it can remain closed until an object is forced through it.

As to the rejection based upon Bonadio, it is clear that pulling proximal ring 44 upwardly would pull the sleeve (the sleeve which passes within the incision) and bands 55 upwardly, causing the bands 55 to first abut the inner wall of the patient's cavity and then to pull the inner wall, along with the incision, upwardly, thus meeting the phrase "the cause the sleeve to apply outward pressure against the patient's body to retract the incision" in claim 1. The proximal ring 44 is inherently capable of being manually grasped by a surgeon and

~

Art Unit: 3731

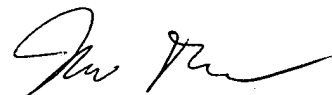
pulled upwardly prior to its attachment to the skin by the adhesive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (703)308-2154. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht
10/6/04



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731